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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 LAURA L. ESTRADA,

12 Plaintiff,

13 v.

14 SERVIS ONE, INC. d/b/a BSI
15 FINANCIAL SERVICES,

16 Defendant.

Case No.: 16-cv-853-BEN (BGS)

**ORDER DENYING PLAINTIFF'S EX
PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

17 Before this Court is an *Ex Parte* Motion for a Temporary Restraining Order, filed
18 by Plaintiff Laura L. Estrada. (Docket No. 2.) Plaintiff seeks to enjoin Defendant from
19 proceeding with the trustee's sale scheduled for April 14, 2016. Defendant filed an
20 Opposition. (Docket No. 4.) For the reasons stated below, the Motion is **DENIED**.

21 **BACKGROUND**

22 Plaintiff Laura L. Estrada, formerly Laura L. Valdivia, obtained a mortgage to
23 purchase her real property in Spring Valley, California. Her mortgage was serviced by
24 Carrington Mortgage Services ("CMS"). Plaintiff transferred her interest in the Spring
25 Valley property to a third party by grant deed, which was recorded on August 1, 2011.¹
26 (Def.'s Req. for Judicial Notice, Ex. 1.)
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28 ¹ The Court grants Defendant's request for judicial notice. (Docket No. 4-1.)

1 On August 28, 2015, CMS offered to enter into a Trial Period Plan (“TPP”) with
 2 Plaintiff. Under the TPP, Plaintiff agrees that “[i]f [she is] in compliance with this [TPP]
 3 and [her] representations in Section 1 continue to be true and correct in all material
 4 respects, CMS will provide [her] with a Home Affordable Modification Agreement. . . .”
 5 (Mot. Ex. A (emphasis added).) In Section 1, Plaintiff represented that “[t]here has been
 6 no change in the ownership of the Property since I signed the Loan Documents.” (*Id.*)
 7 The TPP further states, “If . . . CMS determines that [the borrower has] submitted any
 8 false or misleading information or [that the borrower’s] representations in Section 1 were
 9 not, or are no longer, true and correct, the Loan Documents will not be modified and this
 10 Plan will terminate.” (*Id.*) The TPP reiterates that it “is not a modification of the Loan
 11 Documents and that the Loan Documents will not be modified unless and until [the
 12 borrower] meet[s] all of the conditions required for modification.” (*Id.*)

13 On September 16, 2015, the servicing of Plaintiff’s mortgage was transferred from
 14 CMS to Defendant Servis One, Inc. On September 26, 2015, Plaintiff made the first
 15 payment of \$1,985 under the TPP. On October 15, 2015, Defendant sent notice to
 16 Plaintiff that she was not eligible for the loan modification. Plaintiff made the second
 17 payment on November 1, which Defendant rejected. Plaintiff attests that Defendant
 18 would not accept the third payment. Defendant then issued a Notice of Trustee’s Sale.
 19 (Mot. Ex. B.)

20 Plaintiff initiated this action alleging breach of contract, promissory estoppel, and
 21 violations of the California Homeowner Bill of Rights and the Unfair Competition Law.
 22 (Docket No. 1.)

23 LEGAL STANDARD

24 A temporary restraining order (“TRO”) is a form of preliminary injunctive relief
 25 limited to “preserving the status quo and preventing irreparable harm just so long as is
 26 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bd. of*
 27 *Teamsters*, 415 U.S. 423, 439 (1974). It is “an extraordinary remedy that may only be
 28 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v.*

1 *Natural Res. Def. Council*, 555 U.S. 7, 24 (2008).

2 Federal Rule of Civil Procedure 65(b) empowers a court to grant a TRO without
3 written or oral notice to the adverse party “only if”:

4 (A) specific facts in an affidavit or a verified complaint clearly show that
5 immediate and irreparable injury, loss, or damage will result to the movant
6 before the adverse party can be heard in opposition; and

7 (B) the movant’s attorney certifies in writing any efforts made to give notice
and the reasons why it should not be required.

8 The Court’s substantive analysis on a motion for a TRO is substantially identical to
9 that on a motion for a preliminary injunction. *See Stuhlberg Int’l Sales Co. v. John D.*
10 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Plaintiff must demonstrate: (1) a
11 likelihood of success on the merits; (2) a likelihood of suffering irreparable harm absent
12 injunctive relief; (3) the balance of equities tips in favor of injunctive relief; and (4)
13 injunctive relief is in the public interest. *Winter*, 555 U.S. at 20. In the Ninth Circuit,
14 “serious questions going to the merits and a hardship balance that tips sharply toward the
15 plaintiff can support issuance of an injunction, assuming the other two elements of the
16 *Winter* test are also met.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132
17 (9th Cir. 2011) (internal quotation marks omitted).

18 **DISCUSSION**

19 Ordinarily before issuing a TRO, the Court must hold a hearing or otherwise
20 provide the opposing party with an opportunity to respond. In this case, the Court gave
21 Defendant time to file an opposition, which it did. (Docket Nos. 3, 4.) Therefore, the
22 notice requirement is satisfied.

23 As for the likelihood of success on the merits, Plaintiff failed to demonstrate
24 standing. The plaintiff bringing an action in the federal court has the burden to show that
25 Article III standing exists. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992);
26 *Snake River Farmers’ Ass’n, Inc. v. Dep’t of Lab.*, 9 F.3d 792, 795 (9th Cir. 1993).
27 Specifically, the plaintiff must show (1) an injury in fact; (2) traceable to the challenged
28 action of the defendant; and (3) likely to be redressed by a favorable decision. *Lujan*, 504

1 U.S. at 560. A standing inquiry accordingly focuses on whether the plaintiff is the proper
2 party to bring the lawsuit. *Raines v. Byrd*, 521 U.S. 811, 818 (1997). Under Federal Rule
3 of Civil Procedure 17(a), “[a]n action must be prosecuted in the name of the real party in
4 interest,” such as the trustee of an express trust. “In general, it is the person holding title
5 to the claim or property involved” who is the real part in interest. *U-Haul Int’l, Inc. v.*
6 *Jartran, Inc.*, 793 F.2d 1034, 1038 (9th Cir. 1986).

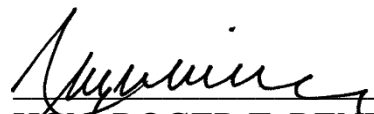
7 Plaintiff claims that the Spring Valley property is held in a trust. The trustee is
8 Leopolda Tellechea. (Def. Req. for Judicial Notice, Ex. 1.) “As a general rule, the
9 trustee is the real party in interest with standing to sue and defend on the trust’s behalf.”
10 *Aguirre v. Cal-Western Reconveyance Corp.*, 2012 WL 273753, at *4 (C.D. Cal. Jan. 30,
11 2012) (citing *In re Estate of Bowles*, 169 Cal. App. 4th 684, 691 (2d Dist. 2008)). As
12 Plaintiff has not shown that she is the trustee or that she has legal title to the property, it
13 appears that she lacks standing and is not the real party in interest.

14 In addition, Plaintiff’s Complaint is based upon her compliance with the TPP.
15 Plaintiff asserts that all of her representations in the TPP were true and that Defendant
16 breached the agreement by unilaterally terminating the Plan. However, as evidenced by
17 the grant deed recorded in 2011, Plaintiff transferred her interest in the property to
18 “Princesa Lorena 1210, Trustee Leopolda Tellechea.” (Def. Req. for Judicial Notice, Ex.
19 1.) As such, Plaintiff’s representation to CMS that there had been no change in
20 ownership of the property since Plaintiff signed the loan documents was not true or
21 correct.

22 Because Plaintiff does not have legal title to the property and because she did not
23 comply with the terms of the TPP, she cannot establish a likelihood of success on her
24 claims. Plaintiff’s Motion is therefore **DENIED**.

25 **IT IS SO ORDERED.**

26
27 Dated: April 13, 2016

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HON. ROGER T. BENITEZ
United States District Judge